IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION

PHILLIP EGGELSTON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	6:10-cv-02290-JEO
	)	
MARSHALL DURBIN FOOD	)	
CORPORATION,	)	
	)	
Defendant.	)	

ORDER

This is a closed case in which Magistrate Judge John E. Ott, on December 23, 2015, filed his report and recommendation recommending the following:

1) defendant, Marshall Durbin Food Corporation's ("Marshall Durbin's"), "Motion to Vacate Arbitrator's Award or in the Alternative, Motion to Reinstate CV 10-2290 and Vacate" (doc. 21) be denied in part, specifically to the extent that it asks the court to reinstate this closed civil action that was dismissed on June 21, 2012;

2) the Clerk should be directed to open a new case, assign it to Magistrate Judge John E. Ott, and refile Marshall Durbin's pending motion (doc. 21) as an initial pleading in the new case, as an application to vacate an arbitration award pursuant to 9 U.S.C. § 9;

3) the filing fee in such new case should be deemed waived;

4)   the Clerk should be further directed to refile all of the material subsequently filed in this action (docs. 22 through 31, inclusive) in the new action; and

5)   all such pleadings, motions and other materials should be deemed filed in the new case as of the date they were originally filed in this action, so as to preclude any limitations period concerns.

(Doc. 34.) On January 6, 2016, Marshall Durbin filed objections to the report and recommendation. (Doc. 35.) Marshall Durbin objected to the magistrate judge's finding that this Court lacks jurisdiction in this closed civil action over its application to vacate; to the magistrate judge's recommendation that the Clerk should refile its motion to vacate in a newly opened case; and to the magistrate judge's recommendation that the newly opened case should be assigned to him.

The undersigned was then randomly drawn to review the report and recommendation. Having now carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and Marshall Durbin's objections thereto, the Court is of the opinion that the report and recommendation is due to be adopted and accepted in part and reversed in part. The Court is of the opinion that the new case should be randomly assigned in accordance with the Court's internal operating procedures; accordingly, the magistrate judge's recommendation that the new case be assigned to him is hereby REVERSED. However, because the Court is of the opinion that it lacks jurisdiction

in this particular closed case to consider the pending motions to vacate or confirm the arbitrator's award, the report and recommendation is hereby is ADOPTED and the recommendation is ACCEPTED in all other respects.

Consequently, Marshall Durbin's "Motion to Vacate Arbitrator's Award or in the Alternative, Motion to Reinstate CV 10-2290 and Vacate" (doc. 21) is hereby DENIED IN PART, specifically to the extent that it asks the Court to reinstate this closed civil action that was dismissed on June 21, 2012. The Clerk is hereby DIRECTED to open a new case with a new case number, randomly assign it in accordance with the Court's internal operating procedures, and refile Marshall Durbin's pending motion (doc. 21) as the initial pleading in the new case, as an application to vacate an arbitration award pursuant to 9 U.S.C. § 9. The Clerk is hereby DIRECTED to WAIVE the filing fee in the new case. The Clerk is further hereby DIRECTED to refile all of the material subsequently filed in this action (docs. 21 through 36, inclusive) in the new action. All such pleadings, pending motions and other materials are hereby deemed filed in the new case as of the date they were originally filed in this action, so as to preclude any limitations period concerns.

DONE AND **ORDERED** ON FEBRUARY 4, 2016.

L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE

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